

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

IN RE: )  
 )  
DIANE ELIZABETH ELDER ) Case No. 20-32216-KLP  
 ) Chapter 7  
Debtor )

**NOTICE OF MOTION TO EXTEND THE AUTOMATIC STAY AND HEARING**

The above named Debtor, by counsel, has filed a Motion to Extend the Automatic Stay with the Court pursuant to 11 U.S.C. § 362(c)(3)(B). Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one.

**NOTICE IS HEREBY GIVEN THAT A HEARING ON THIS MOTION WILL BE HELD  
ON June 3, 2020 at 10:00 a.m. in Honorable Judge Keith L. Phillips' Courtroom, U.S.  
Bankruptcy Court, 701 E. Broad Street, Room 5100, Richmond, VA 23219.**

If you want to be heard on this matter, then no later than three (3) days before the date of the hearing, you or your attorney must:

1. File with the court, at the address below, a written response pursuant to Local Rule 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

Clerk of Court  
United States Bankruptcy Court  
701 E. Broad Street, Room 4000  
Richmond, VA 23219-3515

2. You must also mail a copy to:

James E. Kane, Esquire  
Kane & Papa, PC  
P.O. Box 508  
Richmond, VA 23218

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

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KANE & PAPA, P.C.  
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Richmond, Virginia 23218-0508  
Telephone (804) 225-9500  
*Counsel for Debtor*

Respectfully submitted,

DIANE ELIZABETH ELDER  
By Counsel

/s/ James E. Kane

James E. Kane (VSB# 30081)  
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*Counsel for Debtor*

**CERTIFICATE OF SERVICE**

I certify that on May 29, 2020, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtors, Chapter 13 trustee, the United States trustee if other than by the electronic means provided for at Local Bankruptcy Rule 2002-1, all attorneys appearing in the previous case as listed below, and to all creditors and parties in interest of the mailing matrix attached hereto.

/s/ James E. Kane

Counsel for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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IN RE: )  
 )  
DIANE ELIZABETH ELDER ) Case No. 20-32216-KLP  
 ) Chapter 7  
Debtor )

**MOTION TO EXTEND AUTOMATIC STAY AND MEMORANDUM IN SUPPORT**

COMES NOW DIANE ELIZABETH ELDER (the “Debtor”), by counsel, pursuant to 11 U.S.C. § 362(c)(3)(B) and files the following Motion to Extend Automatic Stay and Memorandum in Support Thereof, and affirmatively states as follows:

**Jurisdiction**

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §§ 1334 and 157 in that this action arises in and relates to the bankruptcy case of the Debtor.
2. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K), and (O).
3. Venue is proper pursuant to 28 U.S.C. § 1409.

**Background Facts**

4. On May 6, 2020 (hereinafter the “Petition Date”), the Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code (the “instant case”).
5. On May 26, 2020, the Debtor filed a Motion to Convert to Chapter 13.
6. Within the year prior to filing the instant case, Debtor has been a debtor in one (1) pending Chapter 13 bankruptcy case which was filed on February 7, 2019 and dismissed on or about March 3, 2020 (Case No. 19-30652) (the “previous case”). The Debtor has also been a debtor in a Chapter 7 case filed on March 3, 2005 wherein the Debtor received a discharge on June 13, 2005 (Case No. 05-10724).

7. The previous case was dismissed by the Court because the Debtor was delinquent in payments to the Chapter 13 Trustee. In September 2019 the Debtor's employment contract ended and she was out of work for 3 months with no income. Once the Debtor regained employment, she was unable to catch up on the missed payments. Debtor now has stable income from Mpire Technology Group Inc. and will be having her plan payments made via a wage order.

### **Facts of the Instant Case**

8. In the instant case, the Debtor anticipates a proposed Chapter 13 Plan (the "Plan") that commits to pay the Trustee all projected disposable income, \$50.00 per month for a period of one (1) month, and \$460.00 for a period of thirty-five (35) months. Among other provisions, the Plan will propose payment through the Trustee to unsecured creditors a dividend of approximately eleven percent (11%).

### **Discussion**

9. Because the instant case was commenced within one (1) year of the dismissal of the prior case, the automatic stay in the instant case will expire "with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease . . ." unless the Court extends the automatic stay. 11 U.S.C. § 362(c)(3)(A) and (B).

10. Pursuant to 11 U.S.C. § 362(c)(3)(B), Debtor must demonstrate to the Court that the instant case was filed in good faith in order to obtain an extension of the automatic stay.

11. If the Court finds grounds for presuming the instant case was filed "not in good faith," § 362(c)(3)(C) would impose a burden on Debtors to overcome such presumption and prove good faith by clear and convincing evidence. If, however, the Court finds no grounds for presuming the instant case was filed "not in good faith," Debtors must merely prove good faith by a preponderance of the evidence. In re Havner, 336 B.R. 98, 103 (Bankr. M.D.N.C. 2006); In re Ball, 336 B.R. 268, 273 (Bankr. M.D.N.C. 2006).

12. Within the context of motions to continue the automatic stay pursuant to § 362(c)(3), In re Chaney, 362 B.R. 690, 694 (Bankr. E.D. Va. 2007), instructs that the term “good faith” was defined judicially in the Fourth Circuit by Deans v. O’Donnell, 692 F.2d 968, 972 (4<sup>th</sup> Cir. 1982), further refined by Neufeld v. Freeman, 794 F.2d 149, 152 (4<sup>th</sup> Cir. 1986), and left unchanged by Congress when it created § 362(c)(3). Chaney at 694.

13. Pursuant to Neufeld v. Freeman, good faith determinations require courts to consider, *inter alia*, “the percentage of proposed repayment, the debtor’s financial situation, the period of time payment will be made, the debtor’s employment history and prospects, the nature and amount of unsecured claims, the debtor’s past bankruptcy filings, the debtor’s honesty in representing facts, and any unusual or exceptional problems facing the particular debtor.” Id. at 152, *citing Deans v. O’Donnell, 692 F.2d at 972. The focus of the inquiry is “to determine whether or not . . . there has been ‘an abuse of the provisions, purpose, or spirit’ of Chapter 13 in the proposal or plan.” Neufeld at 152, *citing Deans* at 972, and *quoting* 9 Collier on Bankruptcy 9.20 at 319 (14<sup>th</sup> ed. 1978).*

14. In order to apply the Fourth Circuit’s definition of good faith in determining whether the automatic stay should be extended pursuant to § 362(c)(3), “the court must be satisfied that the plan in the new case will succeed where the plan in the prior case did not. Usually this will require a finding that some change in the financial or personal affairs of the debtor has occurred that will allow the debtor to perform under the terms of the plan in the new case. But the inquiry does not end there. The court needs to determine that the repetitive filing does not violate the spirit of the Bankruptcy Code. The new case must not be a ploy to frustrate creditors. It must represent a sincere effort on the part of the debtor to advance the goals and purposes of chapter 13.” Chaney at 694.

### Argument

15. In the case *sub judice* there is a presumption that the instant case was filed “not in good faith” as to all creditors. Therefore, Debtor must prove by clear and convincing evidence that the instant case was filed in good faith.

16. In the instant case, the Debtor has acted in good faith, and Debtor requests that the Court grant an extension of the automatic stay as to all creditors, as to Debtor and his property, and as to the property of the estate for the duration of the instant case

17. Applying the Neufeld factors to Debtor’s circumstances and to this case leads to the following conclusions:

a. *Percentage of proposed repayment* - The Plan is expected to propose to pay a dividend of 11% to non-priority unsecured creditors. Such creditors would receive a dividend of 0% if Debtor were to file a Chapter 7 bankruptcy case. Application of this factor favors a finding of good faith.

b. *Debtor’s financial situation* – Debtor has income from working at Mpire Technology Group Inc where she has worked for two (2) months. Application of this factor favors a finding of good faith.

c. *Period of time payment will be made* - The period of time in which payments will be made is reasonable and is based upon the Debtor’s best efforts. Application of this factor favors a finding of good faith.

d. *Debtor’s employment history and prospects* – Debtor has income from working at Mpire Technology Group Inc where she has worked for two (2) months. Application of this factor favors a finding of good faith.

e. *Nature and amount of unsecured claims* – Debtor’s Schedule F non-priority unsecured debts are estimated to be approximately \$94,264. Debtor has not incurred any unsecured

debt for luxury goods or services or any unsecured debt due to revolving credit accounts or pay day loans within the 90 days prior to filing the instant case. Application of this factor favors a finding of good faith.

f. *Debtor's past bankruptcy filings* - The instant Motion is required due to the fact that the Debtor's previous case that was dismissed within one (1) year of the Filing Date hereof. The Affidavit attached hereto as Exhibit "1" describes fully the reasons that the previous case was dismissed. Debtor incorporates such explanation herein by this reference. Debtor's hardships do not indicate an abuse of the bankruptcy system; rather, they indicate an honest but thus far unsuccessful attempt to financially reorganize. Application of this factor favors a finding of good faith.

g. *Debtor's honesty in representing facts* – Debtor has fully disclosed all assets, liabilities, and pertinent information regarding personal and financial affairs and is prepared to cooperate fully with the Chapter 13 Trustee. Application of this factor favors a finding of good faith.

h. *Any unusual or exceptional problems facing the particular debtors* – There are no unusual or exceptional problems facing Debtor. Application of this factor favors a finding of good faith.

18. Debtor asserts that the instant case does not "violate the spirit of the Bankruptcy Code" and it is not "a ploy to frustrate creditors"; rather, it represents "a sincere effort on the part of the debtor to advance the goals and purposes of chapter 13". See Chaney at 694. In support hereof, the Debtor asserts the following additional arguments:

a. *The timing of the petition* – Between the dismissal of the previous case and the instant case, Debtor did not act in a manner so as to purposely delay payment of debts and did not delay in filing the instant case so as to intentionally frustrate creditors. Debtor's actions in this

regard indicate an intent to use the bankruptcy system to resolve debts in an appropriate manner. Application of this factor favors a finding of good faith.

b. *How the debt(s) arose* – The debts in this case arose primarily over a period of time extending back several years. The debts were not the result of misuse of credit or luxury spending; rather, they arose as a result of ordinary living expenses that Debtor became unable to repay. Application of this factor favors a finding of good faith.

c. *The debtor's motive in filing the petition* – Debtor's motive in filing this case is to apply best efforts to repay creditors and receive a fresh start through bankruptcy. Application of this factor favors a finding of good faith.

d. *How the debtor's actions affected creditors* – The Plan provisions and treatment of creditors are generally described in paragraph 7, *supra*. This factor will rarely favor a debtor, because “[f]iling for bankruptcy relief will almost always prejudice one's creditors.” Galanis, 334 B.R. at 696.

e. *Changes in circumstance and ability to complete this case* – The Affidavit attached hereto as Exhibit “1” describes fully the Debtor’s changes in circumstances and explain both the legitimate bases for the filing of this case as well as the Debtor’s ability to complete this case. Debtor incorporates such explanations herein by this reference. Application of this factor favors a finding of good faith.

WHEREFORE, for the foregoing reasons, DIANE ELIZABETH ELDER respectfully requests this Honorable Court to enter an Order extending the automatic stay as to all creditors, as to Debtor and Debtor’s property, and as to the property of the estate for the duration of the instant case, and for such other and further relief as to the Court shall be deemed appropriate.

Respectfully submitted,

DIANE ELIZABETH ELDER  
By Counsel

/s/ James E. Kane

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**CERTIFICATE OF SERVICE**

I certify that on May 29, 2020, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtor, Chapter 13 trustee, the United States trustee if other than by the electronic means provided for at Local Bankruptcy Rule 2002-1, all attorneys appearing in the previous case as listed below, and to all creditors and parties in interest of the mailing matrix attached hereto.

/s/ James E. Kane  
Counsel for Debtor

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2601 Cattleman Rd.  
Sarasota, FL 34232

Autotrakk Llc  
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1500 Sycamore Rd., Ste. 200  
Montoursville, PA 17754

Blue & Grey Emerg Phys  
PO Box 37877  
Philadelphia, PA 19101

Capital One  
Attn: Bankruptcy  
Po Box 30285  
Salt Lake City, UT 84130

CCI/Contract Callers Inc  
Attn: Bankruptcy Dept  
501 Greene St Ste 302  
Augusta, GA 30901

Check Express Advance  
10679 Courthouse Road  
Fredericksburg, VA 22407

Comenity Bank/roamans  
Po Box 182789  
Columbus, OH 43218

Convergent Outsourcing, Inc.  
Attn: Bankruptcy  
Po Box 9004  
Renton, WA 98057

Credit Control Corp  
Po Box 120568  
Newport News, VA 23612

Cybrcollect  
Attn: Bankruptcy  
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Columbus, OH 43219

Darcey Geissler  
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Vienna, VA 23180

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Monroe, WI 53566

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P.O. Box 808  
Grand Rapids, MI 49518-0808

Fredericksburg Orthopaedic As  
3310 Fall Hill Ave  
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Genesis Bc/celtic Bank  
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MultiSpecialty Health Group  
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